IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Purnima Rani. Versus State of Rajasthan & Anr.

S.B. Civil Writ Petition No. 5977/2003

and

Smt. Bhawana & Anr. Versus State of Rajasthan & Anr.

S.B. Civil Writ Petition No. 2981/2005

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Date of Order: May 10, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.L. Joshi and Mr. H.S. Sidhu, for the petitioners.
Mr.Rameshwar Dave, Deputy Govt. Advocate, for respondents.

BY THE COURT:

Both these writ petitions involve identical questions of law and facts and, therefore, with the consent of learned counsel for the parties, they are being heard and decided by a common order.

In both these writ petitions, the petitioners seek a direction to the respondents to consider their case for the post of Senior Teacher according to their merit and to issue the appointment orders.

The facts and circumstances giving rise to SBCWP No. 5977/2003 filed by petitioner Poornima Rani are that the petitioner claims herself to be a member of Other Backward Class having the qualification of B.A. from J.N.V. University, Jodhpur. On inviting applications by the respondents for the post of Senior Teacher vide advertisement dated 18.8.2003, she applied for the post in question. The respondents has shown the total percentage of marks of petitioner Poornima Rani as 79% in the provisional seniority list but later on it was reduced to 74.06%. Petitioner's case is that as per the formula prescribed for preparation of merit list, the percentage of marks comes to 74.60, whereas the respondents have wrongly assigned it as 74.06%. Petitioner further claimed that the cut off marks fixed by the respondents for female OBC candidate is 74.39% whereas her percentage comes to 74.60 and as such she is entitled for consideration of her case for appointment. Hence this writ petition.

The facts and circumstances giving rise to SBCWP No.2981/2005 filed by petitioners Smt. Bhawana and Smt. Annu Singla are that petitioner Smt. Bhawana is having the qualifications of M.A., B.Ed. and petitioner Smt. Annu Singla is having the qualifications of B.A., B.Ed. Petitioner Smt. Bhawna passed B.A. examinations from Punjab University, Chandigarh with the subjects English, Punjabi and Punjabi (Optional), while

petitioner Smt. Annu Singla passed her B.A. examination with English, Punjabi and Economics. The respondent No.2 invited applications for the recruitment on 101 posts of Senior Teachers in Science, Maths, English and Physical Teacher. The petitioners were called for interview on 19-8-2003 but their name was not included in the office order dated 20-4-2005, by which the respondents provided appointments to 53 male and 16 female teacher and thereby filled up only 69 posts out of 101 posts advertised by them. Hence this writ petition.

I have heard learned counsel for the parties.

According to the learned Deputy Government Advocate, in the writ petition filed by Purnima Rani, SBCWP No.5977/2003, the petitioner therein did not come in the merit as she secured only 73.79% marks whereas the cut-off marks is 74.15% for Female-OBC candidates and 78.04% for Female General candidates. Petitioner Purnima Rani applied as the Female-General candidate and, therefore, the marks to her credit are much less than the cut-off marks which is 78.04%, whereas she secured only 73.79% marks and, thus, she did not come in the merit.

In the writ petition filed by Smt. Bhawana & Anr., SBCWP No.2981/2005, the learned Deputy Government Advocate appearing for the respondent-State submits that both the petitioners did not have English as the optional subject and,

therefore, they are not eligible even for consideration for appointment on the post in question.

Learned Deputy Government Advocate further submits that the controversy involved in the instant writ petitions stands concluded by a decision of this Court in Emarata Ram Pooniya & 8 ors. Vs. State of Rajasthan, 2005 (2) Western Law Cases (Raj.) 358, wherein a Division Bench of this Court held as under:-

> "As per the Advertisement dated 18-8-2003, if a person having Graduation Degree has also passed the examination in additional paper then his marks in additional paper will be substituted and on that basis, his merit shall be considered."

Learned counsel for the petitioners does not dispute the proposition laid down by a Division Bench of this Court in Emarata Ram Pooniya & 8 ors. Vs. State of Rajasthan (supra). In this view of the matter, both the writ petitions deserve to be dismissed.

In Smt. Sarita & 10 ors. Vs. State of Rajasthan & Anr., 2007 (1) CDR 589 (Raj.), this Court held that the provision of rule 266 (3) of the Rajasthan Educational Subordinate Service Rules, 1971 requiring the candidates to have obtained qualification at least with three subjects Mathematics, English and Hindi, is valid and held that the candidate not having either or more of the three subjects are not entitled to claim to be

eligible for appointment. The Court further held that the presumption is always in favour of the validity of the statute and is never in favour of its invalidity. It has also been held that the language of rule 266 (3) has to be interpreted to mean that a candidate should have passed in all the three subjects individually.

In the instant writ petitions, petitioner Poornima Rani could not stand in merit and petitioners Smt. Bhawana and Smt. Annu did not have the English as the optional subject, as stated by the learned Deputy Government Advocate and remained uncontroverted by the petitioners, therefore, they are not entitled for consideration of their candidature for the posts in question.

Consequently, both the writ petitions are dismissed. The stay petitions also stand dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

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